

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.259 of 2015

Judgment Reserved on : 29.8.2019

Judgment Delivered on : 28.11.2019

Tejulal Sahu, age about 22 years, S/o Shri Thakur Ram Sahu, R/o Premnagar, Indira Bhatha, Kusth Colony, P.S. Pandari, District (Revenue and Civil) Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Raipur, District Raipur, Chhattisgarh

--- Respondent

For Appellant : Shri Yogesh Pandey, Advocate
For Respondent/State : Ms. Hamida Siddique, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 6.2.2015 passed by the Additional Sessions Judge (FTC), Raipur in Special Sessions Trial No.313 of 2013, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.200/- with default stipulation
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500/- with default stipulation
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation

Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act')	Rigorous Imprison for 10 years and fine of Rs.1,000/- with default stipulation
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2. Case of the prosecution, in brief, is that on the relevant date, age of the prosecutrix (PW2) was about 13 years. On 22.6.2013, Ballu Rai (PW1), father of the prosecutrix lodged a missing report regarding missing of the prosecutrix stating that on 6.5.2013, the prosecutrix saying that she was going out to play went out of home, but thereafter she did not return. Police registered a case of missing of the prosecutrix. On 12.9.2013, parents of the prosecutrix brought her along with them. Then her recovery proceeding was done by the police. Her statement was recorded under Section 161 of the Code of Criminal Procedure. She was medically examined by Dr. Neela Kumhare (PW7). Statements of other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. Charges were framed against the Appellant.
3. In support of its case, the prosecution examined as many as 7 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant argued that without there being sufficient evidence on record against the Appellant, he has wrongly been convicted by the Trial Court. From the statement of the prosecutrix itself, it is well established that she was a consenting party and she resided along with the Appellant at various places for total about 4 months. There is no clinching evidence available on record that on the date of alleged incident age of the prosecutrix was below 18 years. According to the progress report (school mark-sheet, Article A) of the prosecutrix, her date of birth is 29.7.2000, but the prosecution has not revealed that who got the relevant entries done in the school. Father of the prosecutrix has also not been able to state her actual date of birth. In his statement before the Court, he has categorically stated that when he was aged about 15-16 years, at that time, his marriage was performed and 1-2 years thereafter, his first daughter took birth. He has total 4 children and between all his children, there is a gap of 1–1½ years. According to him, his all the 4 children would have taken birth till his attaining the age of 24-25 years. The prosecutrix is his youngest daughter. In these circumstances, on the date of alleged incident, age of the prosecutrix must be more than 20 years. This witness has categorically stated that his marriage was performed when he was aged about 15-16 years. But, the Trial Court, observing that marriage of this witness was performed 15-16 years prior to the date of recording of his statement before the Court, assumed age of his daughter (the prosecutrix) to be below 15 years. Thus, the finding of the Trial Court in this regard is not in accordance with the evidence available on record and, therefore, the said finding is perverse. Since the prosecutrix was a consenting party and it is not

established that on the date of incident she was below 18 years, no case is made out.

6. Per contra, Learned Counsel appearing for the State opposed the above arguments and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. To determine the age of the prosecutrix, first, I shall examine the evidence available on record. In her Court statement, the prosecutrix (PW2) has stated that she is aged about 13 years and her date of birth is 29.7.2000. Ballu Rai (PW1), father of the prosecutrix has also stated in similar fashion. A progress report (Article A) is also submitted by the father of the prosecutrix wherein date of birth of the prosecutrix is mentioned as 29.7.2000. Both these witnesses have admitted the fact that they have stated the age and date of birth of the prosecutrix on the basis of the entries of the progress report (Article A). But, on what basis the date of birth of the prosecutrix was entered in the said progress report (Article A), there is no evidence available on record in this regard. Ballu Rai (PW1), father of the prosecutrix has also admitted that he had not got prepared any birth certificate of the prosecutrix nor did he get birth of the prosecutrix recorded in the kotwari register. In paragraph 14 of his cross-examination, he has categorically stated that when he was aged about 15-16 years, at that time, his marriage was performed and 1-2 years thereafter his first daughter took birth. He has further admitted that the prosecutrix is his 4th child and there is a gap of 1-1½ years between each of his four

children. If this statement of Ballu Rai (PW1), father of the prosecutrix is taken as it is, it is established that when his age was about 24-25 years, at that time, the prosecutrix took birth. This witness has stated his age to be 44 years at the time of recording of his statement before the Court. In these circumstances, on the relevant date, age of the prosecutrix establishes to be about 20 years. The Trial Court has not properly considered the statement of this witness and has wrongly observed that marriage of this witness was performed 15-16 years before recording of his statement and accordingly arrived at the conclusion that on the date of incident age of the prosecutrix was below 15 years. Thus, the finding of the Trial Court in this regard is contrary to the evidence available on record. From the evidence available on record, it is clear that on the date of incident the prosecutrix was aged about 20 years.

9. With regard to the alleged incident, the prosecutrix (PW2) has stated that on the date of incident when she was going out to play, the Appellant met her and asked her to accompany him. When she refused, he forcibly dragged her towards a vehicle and forcibly took her in the said 4-wheeler. He took her to Village Devpuri and kept her there for about 2 months. Thereafter, he kept her in a house situated near Ayurvedic College for about 2 months. During the aforesaid period of 4 months, he made physical relationship with her. During cross-examination, she has admitted that she was already acquainted with the Appellant and he had ever teased her earlier. When he took her away along with him, at that time, she did not raise any voice. At the house at Village Devpuri and at the house situated near Ayurvedic College, many persons were

residing nearby, but she never said any of them anything about the incident. In paragraph 25 of her cross-examination, she has categorically admitted that the Appellant never did forcible act with her. She has also admitted that when the Appellant used to go out to work, at that time, she used to remain alone at the house, but during that period also, she did not disclose about the incident to anyone nor did she tell about the incident to any of her family members.

10. On a minute examination of the evidence available on record, it is clear that on the date of incident, age of the prosecutrix was about 20 years. From the admission made by the prosecutrix (PW2), it is clear that she was a consenting party and she lived with the Appellant with her own consent for about 4 months and physical relationship was made with her by the Appellant with her consent. Therefore, no offence is made out.
11. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him. If any amount has been paid towards the fine imposed by the Trial Court, the same shall be refunded to the Appellant.
12. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE